



June 28, 1999

Ms. Cynthia Villarreal-Reyna  
General Counsel  
Texas State Board of Pharmacy  
333 Guadalupe Street, Box 21  
Austin, Texas 78701-3942

OR99-1787

Dear Ms. Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125317.

The Board of Pharmacy (the "board") received a request for a written statement taken as part of an investigation conducted by the board. You have supplied the responsive information to our office for review, claiming that it is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 17(q) of article 4542a-1 of Vernon's Texas Civil Statutes. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Article 4542a-1 of Vernon's Texas Civil Statutes, "the Pharmacy Act," designates the powers and duties of the board. Section 17(i) authorizes the board to conduct investigations into violations of the Pharmacy Act or the rules of the board. Section 17(q) controls the release of materials developed in these investigations. Section 17(q) reads:

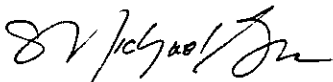
Board investigative files and all information and materials compiled by the board in connection with an investigation are confidential and are not subject to disclosure under Chapter 552, Government Code, and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the licensee;
- (2) pharmacist or pharmacy licensing or disciplinary authorities of other jurisdictions;
- (3) a pharmaceutical peer review committee as outlined in section 27A of this Act;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

Thus, this statute, with release provisions that do not apply here, makes all information and materials compiled by the board in connection with its investigations confidential. Counsel for the requestor argues that a previous release of this information to the requestor waives the confidentiality of this information. We disagree. The release of confidential information is prohibited by Government Code section 552.352. Where release of information is expressly prohibited by law, release of that information does not alter the confidential nature of the information. *See Open Records Decision No. 400 at 2 (1983)*. We conclude that the subject information is confidential and must not be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 125317

Encl. Submitted documents

cc: Mr. Breck Harrison  
Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)